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VIA ECFS

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte, Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311

Dear Ms. Dortch:

On May 1, 2019, Rick Chessen and Radhika Bhat of NCTA – The Internet & Television Association; Maureen O’Connell and Christianna Barnhart of Charter; Howard Symons of Jenner & Block LLP, on behalf of Charter; Jordan Goldstein of Comcast; David Murray of Willkie Farr & Gallagher LLP, on behalf of Comcast; and Barry Ohlson of Cox met with Michelle Carey, Holly Saurer, Martha Heller, Brendan Murray, Raelynn Remy, and Olivia Avery of the Media Bureau to discuss the above-referenced proceeding.¹ In particular, NCTA discussed the need for the Commission to reaffirm the mixed-use rule and clarify its scope to prohibit state and local governments from imposing fees and regulations on non-cable services offered over cable systems, as well as the construction and deployment of facilities or equipment used to offer those services.

NCTA noted that, as is amply demonstrated by the record in this proceeding,² franchising authorities have greatly increased demands to regulate the non-cable services that cable operators offer, including by requiring cable operators to obtain separate franchises and pay separate franchise fees for each service offered over their cable systems. These demands are harmful to consumers, impede broadband deployment, and are contrary to the Communications Act.

¹ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, Second Further Notice of Proposed Rulemaking, 33 FCC Rcd. 8952 (2018).

² *See* Reply Comments of NCTA – The Internet & Television Association, MB Dkt. No. 05-311, Appendix at 1-3 (Dec. 14, 2018); NCTA – The Internet & Television Association *Ex Parte*, MB Dkt. No. 05-311 (filed Mar. 13, 2019); NCTA – The Internet & Television Association *Ex Parte*, MB Dkt. No. 05-311 (filed Apr. 19, 2019).

We explained that Commission precedent and numerous provisions of the Communications Act provide clear legal bases to bar state and local governments from regulating non-cable services offered over cable systems and the equipment and facilities used to provide such services.³ Consistent with this authority and with congressional intent, the Commission should reaffirm that a cable franchise authorizes construction, installation, maintenance and operation of a cable system to provide cable services as well as non-cable services, and that the mixed-use rule applies to all cable operators. In so doing, the Commission should clarify that the mixed-use rule prohibits duplicative authorizations and fees in excess of the statutory cap – however those fees are denominated⁴ – for access to rights-of-way to provide cable and non-cable services, including, among other things, authorizations and fees to upgrade the cable system or deploy Wi-Fi and small cell antennas on, attached to, or as part of the system. We also urged the Commission to make clear that the mixed-use rule extends to all state and local government attempts to regulate non-cable services under any purported source of authority, even when states and localities claim not to be acting as franchising authorities.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules. Please direct any questions to the undersigned.

Respectfully submitted,

/s/ **Rick Chessen**

Rick Chessen

CC: Michelle Carey
Holly Saurer
Martha Heller
Brendan Murray
Raelynn Remy
Olivia Avery

³ See Comments of NCTA – The Internet & Television Association, MB Dkt. No. 05-311, at 7-26 (filed Nov. 14, 2018).

⁴ See *supra* note 2 (citing filings in this proceeding documenting the range of such fees and assessments).